

**Consent Agenda Item 1.d**

March 11-12, 2020 Board Meeting

Case No. 19CW3019 (Water Division 3); The City of Alamosa

**Summary of Water Court Application**

Application for underground water rights, for changes of water rights, appropriative right of exchange and for approval of plan for augmentation.

**Staff Recommendation**

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in February 2020 to protect CWCB's instream flow water rights.

**CWCB Instream Flow Water Rights**

The CWCB holds water rights, including the following instream flow water rights in Water Division 3 in the Alamosa-Trinchera, Conejos, and Rio Grande Headwaters Watersheds, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
13CW3013^ (Div. 3)	Alamosa River	outlet Terrace Reservoir	hdgt Gabino Gallegos Ditch	2.5	04/15/1870
13CW3013^ (Div. 3)	Alamosa River	Gabino Gallegos hdgt	County Road 10	2.5	04/15/1870
13CW3014^ (Div. 3)	Alamosa River	outlet of Terrace Reservoir	Valdez Ditch hdgt	0.5	04/10/1870
13CW3014^ (Div. 3)	Alamosa River	Valdez Ditch hdgt	county road 10	0.5	04/10/1870
83CW0051 (Div. 3)	Clear Creek	confl N & S Clear Creek	confl Rio Grande River	5 (10/1 - 4/30) 10 (5/1 - 9/30)	08/16/1982
84CW0138 (Div. 3)	Conejos River	confl unnamed tributary	confl Saddle Creek	10 (10/1 - 4/30) 40 (5/1 - 9/30)	10/07/1982
82CW0237 (Div. 3)	Conejos River	confl Saddle Creek	confl S Fork Conejos River	15 (10/1 - 4/30) 45 (5/1 - 9/30)	10/07/1982
82CW0214 (Div. 3)	Conejos River	confl S Fork Conejos River	confl Elk Creek	25 (10/1 - 4/30) 75 (5/1 - 9/30)	10/07/1982
82CW0216 (Div. 3)	Conejos River	confl Elk Creek	USGS gage near Mogote	45 (10/1 - 4/30) 90 (5/1 - 9/30)	10/07/1982
83CW0047 (Div. 3)	North Clear Creek	1 mile below Continental Res	confl South Clear Creek	1 (10/1 - 4/30) 9 (5/1 - 9/30)	08/16/1982
83CW0040 (Div. 3)	Rio Grande	confl Squaw Creek	confl Clear Creek	20 (10/1 - 4/30) 55 (5/1 - 9/30)	08/16/1982

83CW0049 (Div. 3)	Rio Grande	confl Clear Creek	confl Trout Creek	45 (10/1 - 4/30) 90 (5/1 - 9/30)	08/16/1982
83CW0039 (Div. 3)	Rio Grande	confl Trout Creek	confl Goose Creek	65 (10/1 - 4/30) 150 (5/1 - 9/30)	08/16/1982
83CW0042 (Div. 3)	Rio Grande	confl Goose Creek	confl S Fork Rio Grande	80 (10/1 - 4/30) 160 (5/1 - 9/30)	08/16/1982

^ Donated/Acquired Water Right

### **Potential for Injury**

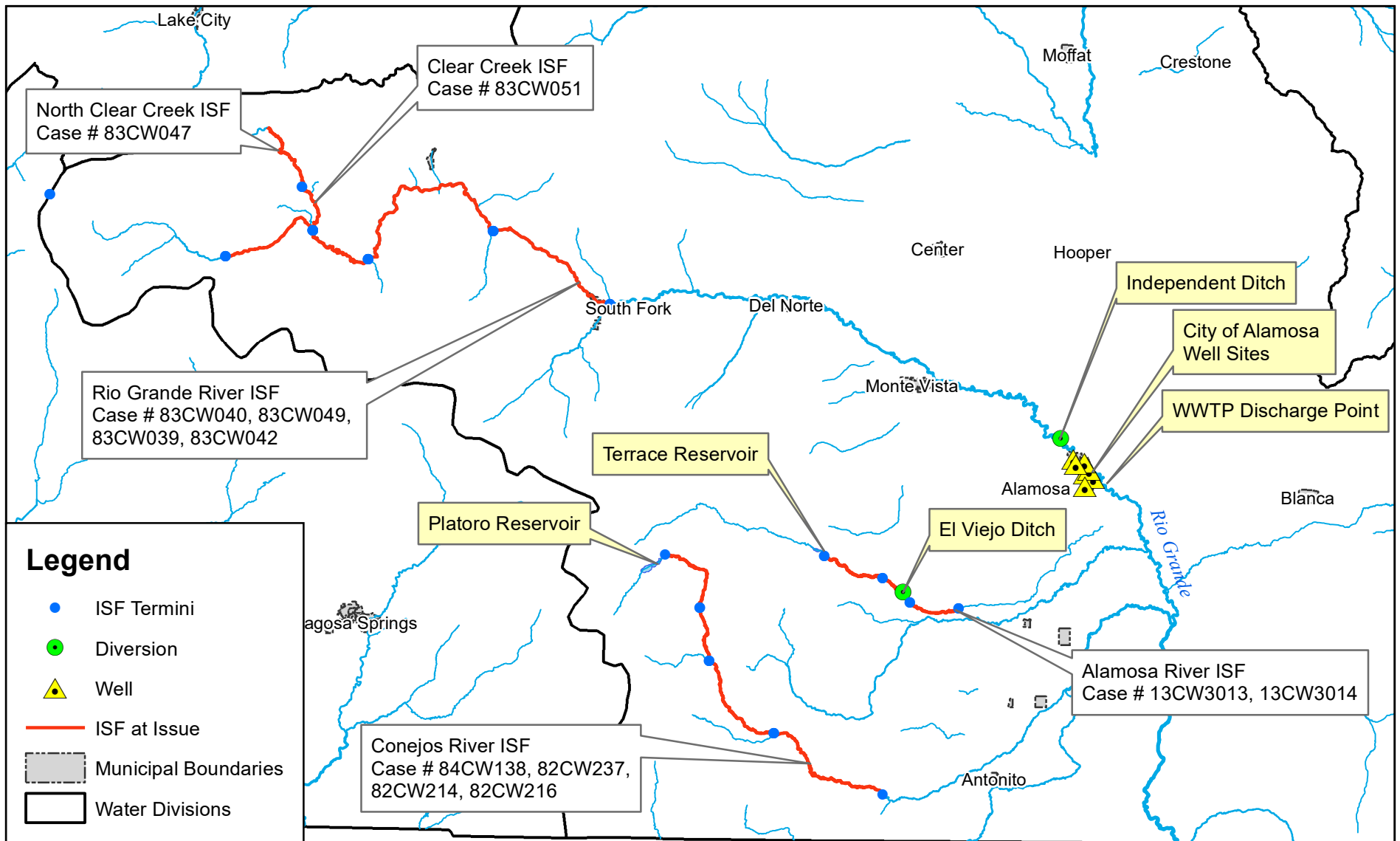
- The proposed appropriative right of exchange should be defined clearly with a reference to intervening instream flow water rights so that the CWCB's instream flow water rights are not injured.
- The proposed plan for augmentation may not replace depletions in the proper time, place and amount, which could injure the CWCB's instream flow water rights.
- The proposed change of water rights could cause an expansion of use and could alter the time, place and amount of historical return flows, which could injure the CWCB's instream flow water rights.
- The application does not present sufficient information to fully evaluate the extent to which the Board's instream flow rights may be injured.

### **Other Objectors**

Statements of Opposition were also filed by: Rio Grande Water Users Association; Rio Grande Water Conservation District; Terrace Irrigation Company; and the State Engineer and the Division Engineer, Water Division 3.

### **Attorney Representing CWCB**

Christopher R. Stork, Assistant Attorney General, is assigned to this case and can be contacted at christopher.stork@coag.gov, or 720-508-6311.

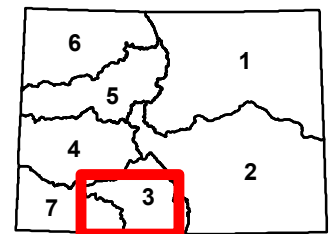


**COLORADO**  
**Colorado Water Conservation Board**

Department of Natural Resources

March 11-12, 2020 CWCB Board Meeting  
 Consent Agenda Item 1.d. Statement of Opposition  
 Case No. 19CW3019 (Division 3)  
 City of Alamosa

0 5 10 20 Miles



## DISTRICT COURT, WATER DIVISION 3, STATE OF COLORADO

---

**TO: ALL PERSONS INTERESTED IN WATER APPLICATIONS FILED IN  
WATER DIVISION 3.**

Pursuant to C.R.S. 37-92-302(3), you are notified that the following is a resume in Water Division 3, containing notice of applications and amended applications or requests for correction filed in the office of the Water Clerk during the month of December 2019 in which the court ordered publication.

The names and addresses of applicants, description of water rights, or conditional water rights involved, and description of ruling sought, are as follows:

---

**Case No. 2019 CW 3019. City of Alamosa**, P.O. Box 419, 300 Hunt Ave. Alamosa, CO 81101 (Erich Schwiesow, Alamosa City Attorney, PO Box 419, 300 Hunt Ave., Alamosa, CO 81101 (719) 587-2498). Application for underground water rights, changes of water rights, appropriative right of exchange, and approval of plan for augmentation. In Alamosa, Conejos, Hinsdale and Rio Grande Counties.

This Application is designed to work with the City of Alamosa's pending Application for Conditional and Appropriative Rights of Substitution and Exchange, 2015 CW 3029, and pending Application for Change of Water Right, 2018 CW 3012, to provide a plan to augment the City's municipal wells. The application is in four parts: A) Application for Underground Water Rights – New Rights in Existing Structures, which seeks to re-decree Alamosa's existing confined aquifer municipal wells to new water rights in the same structures having the additional right to reuse and successively use to extinction the accretion credits derived from application of the RGDSS model to Alamosa's well pumping, including the ability to transfer such credits to other entities seeking replacement water on the Rio Grande and the Conejos River; B) Application for Changes of Water Rights to change interests in the El Viejo Ditch on the Alamosa River and the Independent Ditch on the Rio Grande to include a use for augmentation and replacement water to replace injurious depletions to those two rivers caused by pumping of Alamosa's confined aquifer municipal wells; C) Application for Appropriative Right of Substitution and Exchange to allow the City to exchange the replacement water decreed to the El Viejo Ditch through this Application upstream for storage and subsequent release to cover the City's injurious depletions to the Alamosa River injuring junior water rights upstream of the El Viejo headgate; and D) Application for Approval of Plan for Augmentation to replace injurious depletions to the Rio Grande, the Conejos River, and the Alamosa River caused by pumping of Alamosa's confined aquifer municipal wells to bring the wells in compliance with the Groundwater and Irrigation Season Rules for Water Division No. 3. **Part A New Underground Water Rights.** Name, legal description of point of diversion, source of water, depth of well date of appropriation, flow rate, and annual diversion amount for each well claimed: **Ross Ave. Well.** WDID 2005066; NE1 / 4SW1 / 4 Sec. 10 T37N R10E, NMPM, at a point 2735 ft. from NSL, 1360 ft. from WSL.; 1800 gpm from confined aquifer 1500 ft. deep, 2900 acre feet/yr;

**12<sup>th</sup> St. Well.** WDID 2006316; SW1 / 4SW1 / 4 Sec. 10 T37N R10E, NMPM, at a point 650 ft. from SSL, 50 ft. from WSL.; 1800 gpm from confined aquifer 1675 ft. deep, 2900 acre feet/yr;

**Cole Park Well.** WDID 2006317; NW1 / 4NE1 / 4 Sec. 10 T37N R10E, NMPM, at a point 983 ft. from NSL, 1749 ft. from ESL.; 600 gpm from confined aquifer 1000 ft. deep, 968 acre feet/yr;

**Murphy St. Well** WDID 2006408; NE1 / 4SW1 / 4 Sec. 4 T37N R10E, NMPM, at a point 3600 ft. from NSL, 2580 ft. from WSL.; 2100 gpm from confined aquifer 1000 ft. deep, 3387 acre feet/yr;

**Weber St. Well** WDID 2005067; NW1 / 4NW1 / 4 Sec. 4 T37N R10E, NMPM, at a point 1142 ft. from NSL, 1300 ft. from WSL.; 800 gpm from confined aquifer 1500 ft. deep, 1290 acre feet/yr;

**21<sup>st</sup> St. Well.** WDID 2005143; NE1 / 4SW1 / 4 Sec. 10 T37N R10E, NMPM, at a point 2760 ft. from NSL, 1500 ft. from WSL.; 2200 gpm from confined aquifer 1648 ft. deep, 3549 acre feet/yr.

**Appropriation date for all wells** is December 31, 2019. **Uses claimed for all wells:** municipal use within the City of Alamosa and outside the city boundaries pursuant to limited contracts the City has for providing water to entities outside city boundaries, as well as the right to the use, re-use, and successive use to extinction of the water diverted by the wells, including, specifically, the use of accretion credits (stemming from the City's return of effluent discharge and municipal return flows causing accretions to the Rio Grande calculated by the RGDSS model used as the basis for the state and division engineer's application of the Groundwater and Irrigation Season Rules for Water Division No. 3 and the Confined Aquifer New Use Rules for Division 3) to replace, both directly and by exchange, depletions to all reaches of the Rio Grande and to all reaches of the Conejos River, whether caused by the pumping of Alamosa's wells or any other cause, thereby including the right to lease, sell, or otherwise transfer the accretion credits to other entities causing depletions to those rivers. **Part B: Change of Water Rights for**

**Augmentation.** Name and details for water right for which change is sought: 1.

**Independent Ditch.** Date entered: May 1, 1896. Decreed point of diversion: SW 1 / 4 NW 1 / 4 Section 29, Township 38 North, Range 10 East, NMPM. Amount: 11.2 cfs. Applicant owns and is changing 10.2 cfs of the 11.2 cfs decreed to the Independent Ditch. Source: Rio Grande.

Appropriation date: March 24, 1879. Historical Use: Irrigation of an average of approximately 398.4 acres of land per year located generally in Sections 2, 3 and 4, T 37 N, R 10 E, NMPM, and Section 34, T 38 N, R 10 E, NMPM. In Case No. 2009 CW 33, a portion of the historical consumptive use, totaling 149.89 acre feet per year, was changed to irrigation of 34.6 acres in the Back 9 of the City's Cattails Golf Course and augmentation of evaporation from 34.4 acres the City's Borrow Pond. **2. El Viejo Ditch.** Date entered: July 11, 1888, Conejos County District Court. Decreed point of diversion: "From the Alamosa River, with headgate on the north bank thereof, at a point in the SW1 / 4 of Sec. 1 Tp. 35 N. R. 7 E. N.M.M., with a general course easterly. . ." Note that DWR records list the headgate as in the NE1 / 4NW1 / 4 of Section 1, with UTM coordinates Easting 397244.0 and Northing 4130066.0. Amount: 19.2 cfs. Applicant has leased and intends to change 36 acre feet annually of Cactus Hill Farms's undivided 32.6% interest in the El Viejo Ditch. Source: Alamosa River. Appropriation date: August 1, 1867.

Historical Use: Irrigation of an average of 314 irrigated acres in Section 9, 10, and 11 of T35N, R8E, NMPM. **Description of proposed change:** Alamosa proposes to add to the Independent Ditch a use for provision of augmentation and replacement water to replace injurious depletions to all reaches of the Rio Grande and of the Conejos River caused by lagged depletions from pumping of Alamosa's municipal wells described above, including by exchange and storage in upstream reservoirs. The City intends to dry up acreage on the Alamosa Ranch historically irrigated by the Independent Ditch, and leave that water in the Rio Grande at the Independent

Ditch headgate to be exchanged to the other reaches on the Rio Grande and the Conejos, and exchanged into storage in the Rio Grande or Continental Reservoir for subsequent release on the Rio Grande, and into Platoro Reservoir for subsequent release on the Conejos River as described in Part C hereof, setting forth the City's plan for augmentation. See the City's pending exchange case, 2015 CW 3029. Alamosa also intends to add a use for augmentation and replacement water to replace injurious depletions to all reaches of the Alamosa River, including by exchange and storage in Terrace Reservoir upstream, to its leased interest in the El Viejo Ditch to augment depletions to the Alamosa River caused by pumping of its municipal wells described above. Alamosa will cause Cactus Farms to reduce the consumptive use of its El Viejo Ditch rights by up to 36 acre feet per year (varying year by year depending upon Alamosa's augmentation and/or replacement requirements in any given year). Consumptive use credits will be bypassed at the ditch headgate and left in the Alamosa River. The portion of the dry-up parcels' water supply that historically contributed to ditch carriage loss will be surrendered to the ditch to keep other ditch members whole. The portion of historic return flows associated with the dry-up parcels will be placed in a recharge basin on the Cactus Hill Farms to replicate historic return flows. The specific parcels that may be dried-up may change from year to year based upon Alamosa's need for HCU credits and the owner's preference. **Part C, Appropriative Right of Exchange. Summary of exchange sought:** Alamosa intends to exchange the changed El Viejo augmentation and replacement water from the headgate of the El Viejo Ditch upstream to be stored in the Terrace Reservoir when exchange potential exists and subsequently released to replace injurious depletions caused by the pumping of Alamosa's wells. Exchange from location: headgate of the El Viejo Ditch, decreed in the SW1 / 4 of Section 1, T. 35 N, R. 7 E., N.M.P.M. DWR records indicate the headgate is in the in the NE1 / 4NW1 / 4 of Section 1, T. 35 N, R. 7 E., N.M.P.M. with UTM Zone 13 coordinates Easting 397244.0 and Northing 4130066.0. **Exchange to location:** Terrace Reservoir, with a point of diversion generally located on the dam in the SW1 / 4NW1 / 4 of Section 23, T 36 N., R. 6 E., N.M.P.M., 2127 feet from the north section line and 2336 feet from the west section line, with UTM Zone 13 coordinates Easting 386111 and Northing 4135228. **Amounts:** Alamosa claims an appropriative right of exchange from the "exchange from" location to the "exchange to" location described above, with a conditional appropriation date of December 31, 2019. The daily rate claimed is 0.5 cfs; annual rate 14.4 acre feet. **Use:** exchange, replacement and augmentation for storage and subsequent release to replace injurious depletions to the Alamosa River upstream of the El Viejo Ditch headgate caused by the pumping of Alamosa's wells. **Part D, Application for Approval of Plan for Augmentation. Structures to be augmented:** the Ross Ave. Well, 12<sup>th</sup> St. Well, Cole Park Well, Murphy St. Well, Weber St. Well, 21<sup>st</sup> Street Well described above, as well as the Golf Course Well, which is Well No. 6, Case No. W-1778, permit No. 13419-F-R. It is a shallow, 16 foot deep well decreed for municipal and irrigation use. The decree date is July 1, 1976. The date of appropriation is July 31, 1956. **Water rights to be used for augmentation:** El Viejo Ditch and Independent Ditch described above, and in addition accretion credits accruing from pumping of Alamosa's municipal wells (not including the Golf Course Well) described above. For achieving sustainability of the aquifer, Alamosa will use the credit from retired pumping from two wells: Well No. 1, Case No. W-2431 ("Vercoles Well") pumping from the confined aquifer at a depth of 1415 feet at a point of diversion described as in the NW1 / 4 SE1 / 4, Sec. 9, T 38 N, R 11 E, NMPM, at a point 2300 ft from the SSL and 1920

from the ESL in Alamosa County. UTM NAD83, Zone 13S 431607 mE, 4156562 mN; and Well No. 1, Case No. W-2233 ("Valley Land Well"), pumping from the confined aquifer at a depth of 708 feet at a point of diversion described as in the SW1 / 4 SW1 / 4, Sec.1, T 35 N, R 10 E, NMPM, at a point 100 feet from the SSL and 100 from the WSL in Conejos County. The sustainability credit from these wells is the subject of pending Case No. 2018CW3012.

**Statement of plan for augmentation:** The City intends to exchange its accretion credit (stemming from the City's return of effluent discharge and municipal return flows causing accretions to the Rio Grande calculated by the RGDSS model) upstream in Reach 2 and in Reach 1 of the Rio Grande, and downstream to Reach 3 of the Rio Grande and also upstream from the confluence of the Rio Grande and the Conejos River to Reach 2 and Reach 1 of the Conejos River, to be used as a source of replacement supply to cover the City's depletions in those reaches. The City further intends to exchange those accretion credits upstream up the Rio Grande for storage in the Rio Grande Reservoir or Continental and/or Santa Maria Reservoirs, and upstream up the Conejos for storage in Platoro Reservoir, with subsequent releases to cover the City's depletions to the various stream reaches at times when there is no exchange potential. Accretion Credit water will be used to satisfy Compact delivery requirements, and then used as an offset for out-of-priority well depletions. This application also seeks to augment up to 100 acre feet per year of diversion through the Golf Course Well, for use on the entire 66 acre golf course located in 66 acres in portions of the SW1 / 4 of Section 3, NW1 / 4 of Section 4, T. 37 N., R. 10 E., NMPM, and a portion of the SE1 / 4 of Section 33, T 38 N., R. 10 E., NMPM. The Golf Course has an irrigation efficiency of 75%, thus the maximum depletion to be replaced is 75 acre feet per year. Accretion credits will be used to replace injurious depletions to caused by pumping of the Golf Course Well. Alamosa's current depletions to the Alamosa River are around 20 acre-feet per year. Future depletions could be as much as 36 acre-feet per year. The City's changed El Viejo Ditch water described above will be used by drying up parcels on Cactus Hill Farm in Section 9, 10, and 11 of T35N, R8E, NMPM that have historically been irrigated by the El Viejo Ditch on a rotational basis to provide the consumptive use credits needed to offset injurious stream depletions on the Alamosa River. As future replacement obligations increase, additional lands will be dried up. As the consumptive use credits required by the City of Alamosa increases over time, additional parcels will be dried-up to meet this obligation, up to a total of 36 AF. The specific parcels that may be dried-up may change from year to year based upon Alamosa's need for HCU credits and the owner's preference. The consumptive use credits will be bypassed at the ditch head-gate and left in the Alamosa River. The portion of the dry-up parcel's water supply that historically contributed to ditch carriage loss will be surrendered to the ditch to keep other ditch members whole. The portion of historic return flows associated with the dry-up parcels will be placed in a recharge basin on the Cactus Hill Farm to replicate historic return flows. Alamosa may choose to bypass and deliver water daily through the irrigation season or may choose to do so in less frequent, larger slugs of water. Alamosa will achieve sustainability of the confined aquifer pursuant to Rule 8.1.7 of the Groundwater and Irrigation Season Rules for Water Division No. 3 by using the historical production 1978-2000 from its municipal wells, and acquiring and retiring the historical production from the two confined aquifer wells described above, located in the response area and at the same depth horizon as its confined aquifer wells to ensure that the withdrawals from its municipal supply wells going forward do not exceed the average annual withdrawals for the period 1978-2000 for the three wells. The Vercoles Well has diverted 641.5 acre feet per year

on average during the period between 1978 and 2000. The Valley Land Well has diverted 1,100 acre feet per year on average during the period between 1978 and 2000. Applicant intends to curtail 641 acre feet per year of the average diversion of the Vercoles Well, and 700 acre feet per year of the average diversion of the Valley Land Well, together with using the diversions from its own municipal wells described above in order to credit that historical 1978-2000 depletion by the wells to meet the sustainability requirements of Rule 8.1.7. In the event the City ceases pumping its municipal wells, and thereby ceases to generate accretion credits, the City will use its Independent Ditch water right to replace injurious lagged depletions from pumping of its municipal wells. The Independent Ditch has historically irrigated an average of approximately 398.4 acres of land per year, with a maximum of 475 acres in any given year, such land located generally in Sections 2, 3 and 4, Township 37 North, Range 10 East, NMPM, and Section 34, Township 38 North, Range 10 East, NMPM. The consumptive use credit remaining with the parcels on the ranch that have not yet been dried-up from irrigation under the Independent Ditch provide 472 acre-ft/yr of consumptive use credit. When and if necessary, the City will dry up as much of the Alamosa Ranch historically irrigated by the Independent Ditch as is required to replace injurious lagged post-pumping depletions from its municipal wells. The City will leave that water in the Rio Grande at the Independent Ditch headgate to be exchanged to the other reaches on the Rio Grande and the Conejos, and exchanged into storage in the Rio Grande or Continental Reservoir for subsequent release on the Rio Grande, and into Platoro Reservoir for subsequent release on the Conejos River as described above to remedy lagged post-pumping injurious depletions.

---

You are further notified that you have until the last day of February 2020, to file with the Water Clerk, a verified statement of opposition setting forth facts as to why a certain application should not be granted or why it should be granted only in part or on certain conditions or a protest to the requested correction. A copy of such a statement of opposition or protest must also be served upon the Applicant or the Applicant's attorney and an affidavit or certificate of such service must be filed with the Water Clerk. A \$192.00 filing fee is required.

PLEASE NOTE: WATER DIVISION 3 HAS MANDATORY E-FILING FOR ALL PARTIES REPRESENTED BY AN ATTORNEY.

You can review the complete applications or requests for correction in the office of the Alamosa Combined Court, 8955 Independence Way, Alamosa, CO 81101. Witness my hand and seal of this Court this 7<sup>th</sup> day of January, 2020.



Jennifer Pacheco,

Clerk of the Alamosa Combined Courts  
Water Court, Water Division 3  
8955 Independence Way, Alamosa, CO 81101